

MEMORANDUM OF LAW

DATE: October 3, 1991

TO: Steve Hogan, Director, Financial Analysis Program, Water
Utilities Department

FROM: City Attorney

SUBJECT: Ownership Rights to the Metropolitan Sewerage System

You have requested an interpretation of the Sewage Disposal Agreements entered into by the City of San Diego, the original nine Participating Agencies, and the seven Later Participating Agencies as those agreements pertain to ownership rights.

California Civil Code section 1636 provides:

A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

The modern approach, however, is to avoid the terminology of "intention" and to look to expressed intent under an objective standard. 1 Witkin, Summary of Cal. Law, (9th ed. 1987) Contracts Section 684, p. 617. Generally speaking, "The rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein; evidence cannot be admitted to show intention independent of the instrument." *Stevenson v. Oceanic Bank*, 223 Cal. App. 3d 306, 316 (1990).

It is a primary rule of interpretation that contracts must be construed from their four corners, and the intention of the parties must be collected from the entire instrument and not detached portions thereof, it being necessary to consider all of the parts to determine the meaning of any particular part as well as of the whole.

Kwikset Locks v. Stewart Commissaries, 225 Cal. App. 2d 146, 149 (1964) citing *Indenco, Inc. v. Evans*, 201 Cal. App. 2d 369, 374 (1962).

The purpose of the Sewage Disposal Agreement is, as defined in Section 1 of the Agreement, to "provide facilities for and the transmission, treatment, disposal of sewage"

Section 3 of the Agreement clearly states that "The City shall acquire, construct, maintain, repair, manage, operate and control facilities for the transmission, treatment and disposal of sewage."

Further, "The Metropolitan Sewerage System shall be owned solely by the City" Other sections within the Agreement define rights and duties with regard to administration, maintenance and operation, repair, reconstruction and replacement, as well as new construction.

In looking to the objective meaning of the words used within the four corners of the Agreement, it is evident that the Agreement is a service contract. For a 'fee' the City acquires, constructs, maintains, repairs, manages, operates and controls facilities for the treatment and disposal of sewage on behalf of the Participating and Later Participating Agencies. Nothing in the Agreement evidences an expressed intent to create a Participating or Later Participating Agency ownership or equity interest in the Metropolitan Sewerage System. Moreover, the express provisions of section 3 quoted above specifically negate any such inference.

Sections 8 and 9 within the Agreement discuss capacity in terms of capacity service. The capacity service charge does not purchase a right to the corpus or infrastructure of the system but a right to the use of a portion of the system's total capacity to transmit, treat, and dispose of sewage.

If you have further questions on this issue, I would be happy to discuss them with you.

JOHN W. WITT, City Attorney

By

Marguerite S. Strand

Deputy City Attorney

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